

HORIZON LAW GROUP LLP
Steven D. Baric, Esq. SBN 200066
David A. Brewster, Esq. SBN 190697
Joshua R. Hernandez, SBN 258266
1920 Main Street, Suite 210
Irvine, California 92614
Telephone No. (949) 261-2500
Facsimile No. (949) 261-2515

Attorneys for Plaintiff
TAXPAYERS FOR A SAFE VENTURA COUNTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TAXPAYERS FOR A SAFE
VENTURA COUNTY, a
California non-profit corporation,

Plaintiff,

J. CLARK KELSO, in his
capacity as Receiver in United
States District Court Case No.
C01-1351 TEH; CALIFORNIA
PRISON HEALTHCARE
RECEIVERSHIP CORP., a
California non-profit corporation.

Defendants.

Case No.: CV 09-0479 SJO (JTLx)

**DECLARATION OF DAVID A.
BREWSTER IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
MOTION TO DISMISS**

Date : March 16, 2009
Time : 10:00 a.m.
Hon. : S. James Otero

I, David A. Brewster, declare as follows:

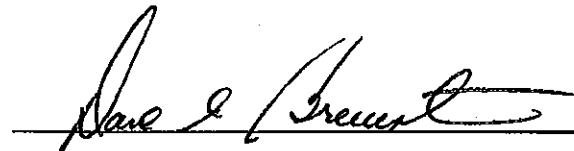
1. I am a partner of Horizon Law Group LLP, counsel for Plaintiff Taxpayers for a Safe Ventura County. I have actively participated in all aspects of instant litigation since the time of its inception. I offer this Declaration in support of Plaintiff's Opposition to Defendant's Motion to Dismiss. The following facts are true

1 of my own personal knowledge and if called upon to testify, I could and would
2 competently testify thereto.

3 2. Attached hereto as Exhibit A is a true and correct copy of the Defendants
4 flyer to "Save the Date" for a town hall style meeting in Camarillo, California.

5 3. Attached hereto as Exhibit B is a true and correct copy of an article from
6 the on-line site of the Ventura County Star newspaper, dated July 13, 2008.

7 I declare under penalty of perjury under the laws of the State of California that
8 the foregoing is true and correct. Executed this 2nd day of March, 2009, at Irvine,
9 California.

10
11 

12 .David A. Brewster
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A



The California Health Care Facility, Ventura

SAVE THE DATE

Environmental Scoping Meeting:

Wednesday, December 10, 2008

5:30 p.m.

Camarillo Community Center Auditorium

1605 East Burnley Street

Camarillo, CA 93010

For more information, visit www.cphcs.ca.gov

EXHIBIT B

[Login](#) | [Contact Us](#) | [Staff](#) | [Site Map](#) | [Archives](#) | [Alerts](#) | [Electronic Edition](#) | [Subscribe to the paper](#)

[Home](#) [News](#) [Sports](#) [Business](#) [Arts & Living](#) [Opinion](#) [Obituaries](#) [Beachcam](#) [Videos](#)
[Local News](#) | [Camarillo](#) [Conejo Valley](#) [Fillmore](#) [Moorpark](#) [Ojai](#) [Oxnard](#) [Port Hueneme](#) [Santa Paula](#) [Simi Valley](#) [Ventur](#)



Attend CSU Channel Island's Graduate Information Session on Furthering Your Education
Reservations: (805) 437-2748, oxed@csuci.edu, www.csuci.edu/oxed

[Master](#)
[Dates: J](#)

[MS Bio](#)
[Dates: J](#)

Camarillo

search

[Home](#) > [News](#) > [Camarillo](#)

Receiver a dire fix for ailing prisons

Broken healthcare leads to drastic, costly remedy

By Timm Herdt (Contact)
Sunday, July 13, 2008



CLICK



Download this story as a podcast!

Video: Community opposition to prison hospital plan



Camarillo residents gathered to share plans on how to fight a federal plan to build a large prison hospital in town..

[Watch now »](#)

SACRAMENTO — Moving further into largely uncharted legal territory, the man acting under a federal judge's order to fix California's abysmal prison healthcare system last week committed state taxpayers to spending \$2.5

order photo reprints
billion.

**Complete
coverage**

You
can
find

The money would be the first installment on a \$7 billion plan to build the new healthcare facilities he believes are necessary. The plan envisions the construction of seven new, stand-alone prison healthcare facilities, one of which is being considered at the site of the Ventura Youth Correctional

more stories, information, conversation about the proposed prison hospital in our special section. The page also has links to all of the important documents the receiver has created about the plan, locations and design.
[Enter now »](#)

Blog

95 percent accurate

Timm
Herd
blogs
on
politics
and
Ventura
County
in
a
presidential
election
year.
[Read
it
now
»](#)

STORY TOOLS

[E-mail story](#)
[Comments](#)
[iPod friendly](#)
[Printer friendly](#)

 [DIGG IT!](#)

MORE FROM CAMARILLO

[Camarillo neighbors fixing up home as family weathers son's cancer fight](#)
[CSUCI reported as 'OK,' in recession](#)
[Camarillo police seek man who exposed himself to girl](#)

Facility in Camarillo.

Where the money will come from, no one knows for certain. But receiver Clark Kelso, armed with a construction plan approved by federal District Court Judge Thelton Henderson, is certain he has the authority to spend it.

The documents Kelso signed Thursday with the construction design firm URS/Bovis immediately commit the state to an obligation of about \$15 million. After the firm completes a prototype design by the end of the year, Kelso intends to sign off on construction contracts committing the state to paying the rest of the \$2.5 billion bill.

"These are legally binding obligations of the state of California," Kelso said. "I wouldn't be signing these contracts if I didn't believe I had both the authority and the ability to pay."

Those obligations could speed a possible showdown in Henderson's courtroom, where Kelso has said he will seek a court order demanding that Controller John Chiang pay the bills by whatever means necessary. The confrontation could be avoided if legislators approve a plan to finance the projects through lease-revenue bonds before the first invoices come due.

Lease-revenue bonds would allow the state to borrow the money upfront and pay it back with interest over time with a portion of the money it spends annually on prisons.

The appointment of a receiver to take control of any aspect of a correctional system is rare; it has been done

on a statewide basis only once before, in Alabama.

"It really is the nuclear option in prison litigation," said John Boston, director of the Legal Aid Society's Prisoners' Rights Project and a national authority on prison law. "I don't know that there's a lot of fine learning about the limits of a receiver's power when the situation has grown so extreme that appointment of a receiver is merited in the first place."

The use of receivers is a long-established practice in English and American jurisprudence, where it

has traditionally been employed to manage or dispose of property. The role of receivers was broadened during the civil rights era, when federal courts appointed individuals to carry out school desegregation orders in cases in which local school officials were uncooperative.

Supreme Court decisions have asserted the rights of federal judges to both fix deficiencies in prison healthcare and to use extraordinary means to ensure that deficiencies are corrected.

Ruling in a 1976 Texas case, the court held that the failure to treat a prisoner's medical needs "may actually produce physical torture or lingering death," the evils of most concern to the drafters of the Eighth Amendment. In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose. The infliction of such unnecessary suffering is inconsistent with contemporary standards of decency."

Henderson ruled in a class-action lawsuit against the state Department of Corrections and Rehabilitation that California's prison healthcare delivery was so bad, it violated the constitutional prohibition of cruel and unusual punishment. Uncontested testimony showed that, on average, one inmate in California dies every six or seven days as a result of inadequate medical treatment.

After state officials made little progress to improve the healthcare system, Henderson announced in 2005 that he would appoint a receiver to take control.

Here, too, the Supreme Court has made clear that federal judges can act aggressively if ordinary means fail. "Federal courts are not reduced to issuing injunctions against state officers and hoping for compliance," the high court held in a 1979 case.

Donald Specter, director of the San Francisco-based Prison Law Office, which represents the plaintiffs in the healthcare lawsuit, said there should be no question about the court's ability to do whatever it takes to bring medical care up to constitutional standards.

"The principle is certainly well established," Specter said. "If state government is running an unconstitutional prison system and they refuse to fix it, the court can do whatever it takes."

Few lawmakers are anxious to test Kelso's authority to tap the state treasury without an appropriation.

"We're not sure what the receiver can do," said Sen. George Runner, R-Lancaster. "I don't think the receiver is sure what he can do."

Although a proposal to have the state issue \$7 billion in revenue bonds to finance the receiver's construction plans has twice died in the Senate for lack of Republican support, Runner said GOP senators are hopeful a deal can be worked out.

Runner is proposing legislation that would fix flaws in a prison-reform law passed last year. Those flaws have prevented the issuance of lease-revenue bonds to finance construction of new beds designed to deal with widespread overcrowding in state prisons.

Sen. Mike Machado, D-Stockton, said that Democrats in the Senate are agreeable to fixing last

year's bill, but that it must be part of a three-pronged solution that also includes passage of his measure to authorize the healthcare construction bonds and approval of budget-cutting measures that would reduce the overall prison population.

If the bond to finance the receiver's plan is not passed, Machado said, the state general fund will be at risk — at a time when the state is without a budget and lawmakers are already struggling to close a \$15 billion shortfall.

"I expressed the urgency of this measure when I brought the bill to the floor a month ago," Machado said.

The progress of both construction plans — those envisioned by last year's law and those laid out by Kelso — potentially could affect a fall hearing before a panel of three federal judges. That panel will decide whether to cap California's prison population, a decision that would effectively force the early release of 20,000 inmates or more.

"When we go before them in November, we've got to demonstrate some progress," Runner said.

"We have some federal judges who are willing to go forward and take draconian action, and we appear to be playing a game of chicken."

Specter, of the Prison Law Office, said he doesn't believe the federal judges' decision whether to cap the prison population will be swayed by whatever plans the state has in place to build new facilities in the future.

"The judges have been pretty clear," he said. "Those beds are three to five years out in the future, and they're concerned with the conditions now. My clients are having trouble seeing doctors now."

Discussions
